

MONTANA LEGISLATIVE HISTORY

Chapter 336 19 95

Bill H 393 S _____ Original bill & history ✓

H. Committee on Local Gov

Hearing Date(s) 2-7 ✓ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Local Gov

Hearing Date(s) 3-16 ✓ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

3/13 RETURNED TO HOUSE
 3/13 SIGNED BY SPEAKER
 3/14 SIGNED BY PRESIDENT
 3/14 TRANSMITTED TO GOVERNOR
 3/17 SIGNED BY GOVERNOR
 CHAPTER NUMBER 161
 EFFECTIVE DATE: 10/01/95

HB 393 INTRODUCED BY GRADY, ET AL.

ALLOW COUNTY COMMISSIONERS TO ASSIGN SUPERVISION OF COUNTY
ROADS TO EITHER A COUNTY SURVEYOR OR A COUNTY ROAD
SUPERINTENDENT

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO LOCAL GOVERNMENT		
2/07	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/11	2ND READING PASSED	98	1
2/13	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LOCAL GOVERNMENT		
3/16	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	45	3
3/27	3RD READING CONCURRED	45	4
	RETURNED TO HOUSE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	93	2
3/31	3RD READING AMENDMENTS CONCURRED	95	1
4/03	SIGNED BY SPEAKER		
4/03	SIGNED BY PRESIDENT		
4/05	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 336		
	EFFECTIVE DATE: 10/01/95		

HB 394 INTRODUCED BY BOHLINGER

REQUIRE A STUDENT PARTICIPATING IN A PROFESSIONAL MEDICAL
EDUCATION PROGRAM OF THE WICHE OR WAMI INTERSTATE
COMPACT EITHER TO REPAY THE STATE BY RETURNING TO MONTANA
TO PRACTICE ONE OF THE PRIMARY CARE DISCIPLINES IN A
MEDICALLY UNDERSERVED AREA IN MONTANA OR TO REPAY
SUPPORT FEES PAID BY THE STATE ON THE STUDENT'S BEHALF

2/01	INTRODUCED
2/01	FIRST READING
2/01	REFERRED TO EDUCATION & CULTURAL RESOURCES
2/02	FISCAL NOTE REQUESTED
2/08	HEARING
2/08	TABLED IN COMMITTEE
2/08	FISCAL NOTE RECEIVED
2/09	FISCAL NOTE PRINTED
2/10	REVISED FISCAL NOTE PRINTED
2/23	MISSED TRANSMITTAL DEADLINE
	DIED IN COMMITTEE

HB 395 INTRODUCED BY RANEY, ET AL.

IMPLEMENT AN INTEGRATED NOXIOUS WEED CONTROL PROGRAM FOR
STATE AGENCIES AND ENTITIES BY CLARIFYING WHAT PROVISIONS

House BILL NO. 393

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSIGN THE SUPERVISION OF COUNTY ROADS TO EITHER A COUNTY SURVEYOR OR A COUNTY ROAD SUPERINTENDENT; AND AMENDING SECTIONS 7-4-2812, 7-14-2102, AND 7-14-2301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-4-2812, MCA, is amended to read:

"7-4-2812. Duties of county surveyor related to roads and bridges in certain counties. (1) ~~The county surveyor of all counties having a total registered vote of 20,000 or over at the last general election shall be responsible~~ The board of county commissioners may assign responsibility for the supervision and direction of all highways, bridges, and causeways within his the county to a county surveyor or to a county road superintendent. The board may allocate the duties between the surveyor and the superintendent.

(2) ~~In the exercise of such control, supervision, and direction, he shall~~ The duties are to:

(a) keep all highways and bridges free and clear of all obstructions;

(b) ~~cause highways to be graded, when needed, and~~ grade, maintain, and repair the same all highways;

(c) ~~cause construct, maintain, and repair all bridges and causeways to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed;~~

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

(i) ~~employ and assign deputies, men, and teams and discharge at his pleasure such deputies, men, and teams and determine how, when, and where such deputies, men, and teams shall work~~ and staff;

(j) purchase and secure all highway and bridge machinery and machinery equipment and tools to

be used upon highways and bridges, with the approval of the board;

(k) purchase and secure all highway, bridge, and causeway supplies and materials, with the approval of the board;

(l) from time to time, make reports and estimates of all matters relating to highways and bridges when required by the board; and

(m) perform ~~such other duties as are now or which may be hereafter~~ required by law.

(3) ~~In the exercise of such control, supervision, and direction, he shall~~ If the duties are assigned to the county surveyor, the surveyor must receive the annual salary provided by law for salaried county surveyors and other county officials."

Section 2. Section 7-14-2102, MCA, is amended to read:

"7-14-2102. General powers relating to county roads -- assignment of responsibility. Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts. The board may assign responsibility for the supervision of county roads to a county surveyor or to a county road superintendent or may allocate the duties between the county surveyor and the county road superintendent."

Section 3. Section 7-14-2301, MCA, is amended to read:

"7-14-2301. County road superintendent -- appointment and compensation. (1) ~~In counties without a county surveyor, each~~ A board of county commissioners may appoint a county road superintendent. ~~He shall~~ The superintendent have such has the duties, powers, and responsibilities ~~as are~~ set forth in this part. After ~~his~~ the appointment, the county road superintendent shall serve at the pleasure of and under the direction and control of the board. ~~He~~ The superintendent shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of ~~his~~ the superintendent's duties.

(2) ~~He shall~~ The superintendent must receive ~~such~~ compensation as is determined by the board."

-END-

HOUSE LOCAL GOVERNMENT

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0289	SOFT, LOREN		ELIMINATE 12% UTILITY RATE INCREASE LIMIT ON MUNICIPAL UTILITIES				
	1/20	1/31		PASS AS AMENDED	2/14	VOTE: 12-6	2/15
HB0303	DENNY, MATT		EXTEND NONPARTISAN NATURE, PROHIBIT SEEKING OTHER OFFICES TO LOCAL GOVT				
	1/20	1/26		TABLED ON	02/14	VOTE: 18-0	
HB0308	EWER, DAVID		REVISE WATER\SEWER LAW RE: RATES, TERMINATION, COLLECTION, & ISSUING BONDS				
	1/21	2/02		PASS AS AMENDED	2/16	VOTE: 12-6	2/17
HB0358	TREXLER, CLIFF		ZONING PROTEST CRITERIA -- MODIFICATIONS				
	1/27	2/09		DO PASS	2/16	VOTE: 12-6	2/17
HB0361	KADAS, MIKE		PROHIBIT ZONING REGS LIMITING PERSONS IN DWELLING BASED ON THEIR RELATIONSHIP				
	1/27	2/09		TABLED ON	02/14	VOTE: 12-6	
HB0393	GRADY, ED		REVISE LAWS RELATING TO SUPERVISION OF COUNTY ROADS				
	2/01	2/07		DO PASS	2/7	VOTE: 18-0	2/09
HB0397	SQUIRES, CAROLYN		PROHIBIT LOCAL GOV'T REQUIRING SEWER HOOK-UP BASED ON DISTANCE TO SEWER LINE				
	2/01	2/09		TABLED ON	02/14	VOTE: 12-6	
HB0398	SQUIRES, CAROLYN		PROHIBIT CITY OBTAINING WAIVER OF PERSON'S RIGHT TO PROTEST ANNEXATION				
	2/01	2/09		ADVERSE RPT ADOPT	2/14	VOTE: 14-4	2/20
HB0417	MILLS, NORM		ALLOW CITY'S GOVERNING BODY TO DECIDE NUMBER OF CITY JUDGES IN CITY COURT				
	2/03	2/14		DO PASS	2/14	VOTE: 18-0	2/15
HB0421	EWER, DAVID		REVISE COUNTY HOSPITAL LAWS				
	2/06	2/14		DO PASS	2/14	VOTE: 18-0	2/15
HB0425	KEENAN, BOB		REQUIRE PAYMENT OF PROPERTY TAXES BEFORE FINAL APPROVAL OF SUBDIVISION PLAT				
	2/03	2/14		DO PASS	2/14	VOTE: 17-1	2/15
HB0438	BRAINARD, MATT		REQUIRE CITY ANNEXATION BE APPROVED BY VOTERS OF CITY & AREA BEING ANNEXED				
	2/04	2/14		TABLED ON	02/14	VOTE: 13-5	

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By VICE CHAIRMAN JACK HERRON, on February 7,
1995, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. William E. Boharski, Chairman (R)
Rep. Jack R. Herron, Vice Chairman (Majority) (R)
Rep. David Ewer, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Ellen Bergman (R)
Rep. John C. Bohlinger (R)
Rep. Matt Brainard (R)
Rep. Matt Denny (R)
Rep. Rose Forbes (R)
Rep. Antoinette R. Hagener (D)
Rep. Bob Keenan (R)
Rep. Linda McCulloch (D)
Rep. Jeanette S. McKee (R)
Rep. Norm Mills (R)
Rep. Debbie Shea (D)
Rep. Joe Tropila (D)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Council
Evelyn Burris, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 393; SB 99
Executive Action:	HB 393 DO PASS
	SB 99 BE CONCURRED IN
	HB 101 DO PASS
	HB 129 TABLED
	SB 52 BE CONCURRED IN
	HB 154 DO PASS
	HB 103 NOT RECONSIDERED
	HB 165 DO PASS AS AMENDED
	HB 166 DO PASS AS AMENDED
	HB 220 DO PASS AS AMENDED

{Tape: 1; Side: A; Approx. Counter: 000; Comments: CHAIRMAN WILLIAM BOHARSKI attended the meeting via speaker phone.}

HEARING ON HB 393

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, Canyon Creek, stated this is an act allowing county commissioners to assign the supervision of county roads to either a county surveyor or a county road superintendent.

Proponents' Testimony:

Blake Wordal, Lewis & Clark County Commissioner, said this legislation was generated by a resolution which was passed unanimously at the Montana Association of Counties annual meeting last September. Mr. Wordal strongly urged this legislation to pass to clarify the powers for managing and maintaining county roads. EXHIBIT 1

John J. Schontz, representing Montana Association Realtors, said they strongly urge the support of this legislation. Mr. Schontz said this is a good management bill.

SEN. GARY FORRESTER, SD 8, Billings, attested that the road issue in Yellowstone County has reached what he calls crisis proportions. He showed a lengthy list of names of constituents in his district who have contacted him regarding road problems during the last two years. In his district, 125 miles of road maintenance has been discontinued. The current county surveyor told him that the county commissioners cannot get together. This bill lays the responsibility solely with the county commissioners and allows them to create the position if they wish. This is a needed tool and he urged a do pass.

Sam Gianenaivcisco, Gallatin County Road Superintendent, Bozeman, and representing the Montana Association of County Road Supervisors stated that four years ago Gallatin County had a surveyor who was elected by a write-in vote. The only time they saw him for one entire year was once a month when he picked his paycheck up. Since then, the county has appointed the Clerk and Recorder to be the surveyor. They feel this bill clarifies the ruling of the county commissioners to appoint someone to take care of the roads.

Commissioner Bill Kennedy, Yellowstone County, stated the MACO resolution was passed during their conference this year. During the conference it was found that numerous counties in Montana have problems with the supervision of roads and one way for counties to clarify problems is with consolidation. Last year Yellowstone county went through consolidation hearings, however they did not consolidate any offices, but one of the problems

that came up was road issues. **Mr. Kennedy** said funding has become an issue with all the new subdivisions, new roadways and old roads. Their budget is \$2.3 million and the bridge budget is \$1 million. They also have a surveyor budget. This is a large undertaking for one person to handle and he urged a do pass.

{Tape: 1; Side: A; Approx. Counter: 14.7;}

Mark Watson, City Administrator, Billings, spoke in favor of HB 393 and said they believe this will be better management, more efficient, reduce political impacts and will help in the building department in Billings.

Jim Wysocki, City of Bozeman, said the city is in support of HB 393 which would put all the responsibilities regarding road management in one spot and create a smoother operation.

Gordon Morris, Director, Association of Counties, spoke in favor of HB 393.

Alec Hanson, League of Cities and Towns, said they also support this bill.

Vernon R. Zickefoose, Yellowstone County, spoke in support of HB 393 and said he heads up the list **SEN. FORRESTER** showed to the committee and spoke about. He said all this came about because of the 1979 resolution that the commissioner determined he could no longer provide road grader service to sub-division roads and some certificate of survey roads. The cost of doing one blading in their county is approximately \$20,000. **Mr. Zickefoose** said this amount in a \$2.3 million budget is a small amount.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. NORM MILLS asked **Mr. Kennedy** if Billings has a county surveyor. He responded yes. **REP. MILLS** asked "If they have a county surveyor in charge of maintaining the roads, by virtue of what law or rule or deficiency of budget can he decline to do what needs to be done for the county and is he not responsible to the county?" **Mr. Kennedy** referred to the bill on the duties of the county surveyor and county commissioners. At budget hearing time, they allocate the dollars for the budget. What has happened is it's up to the discretion of the county surveyor to allocate funding for different projects and is given to the surveyor through the statutes. The surveyor is the only elected official that answers to the commissioners, but in a round-about way. The commissioners have the ultimate authority over county roads, but as soon as the budget is approved the surveyor runs all of the county roads and at his discretion, does the prioritizing. Yellowstone County is putting a road policy together. They have a cross section of engineers, surveyors, realtors a planning officer and county attorney that will put a

road policy together. This will make it more efficient. HB 393 would clarify the duties of the surveyor, road superintendent and give the commissioners the opportunity to go ahead and prioritize the needs.

REP. MILLS asked if the county surveyor acts on his own once he gets budget approval. Mr. Kennedy responded that is correct. REP. MILLS asked to clarify what the difference would be in how he handled roads compared to how the county surveyor handles them now. Mr. Kennedy responded this would give the discretion to the board of county commissioners to assign these responsibilities. Once they are assigned, the road superintendent will work directly for the board of county commissioners and they are ultimately in charge of prioritizing.

REP. TONI HAGENER asked if there are no longer counties in which the commissioner acts as the road supervisor for his area. Mr. Morris said there are ten counties that have surveyors. In rural counties in eastern Montana, state law provides that each county will be divided up into road districts and then a county commissioner is assigned the responsibility for supervising road maintenance and bridges in those districts. That is primarily a small rural county arrangement and the association recommends they get away from that. Mr. Morris stated some of the rural county budgets are based upon the commissioner road districts.

REP. MILLS said on the assumption they would go with a county road superintendent, who would do the grading, setting up, establish grades, and plans of specification preparation including the actual survey necessary for road construction. Mr. Morris responded under the law, it would still be the case that they would have to contract with a professional engineering service. He said in the case of the superintendent, referring to Mr. Wordal statement that all the duties that are identified are almost identical with the superintendent as set forth in the bill relative to the surveyor (see Exhibit 1).

REP. JOHN BOHLINGER referred to the long list of constituents presented by SEN. FORRESTER and inquired where one generates such a list and if he responds to each constituent, does it show that he is making a good faith effort to represent those people. Mr. Kennedy said the list is people who have called SEN. FORRESTER that live in his district and have complaints on roads. He told about the road hearings held in Yellowstone County and said several legislators attended the meetings.

REP. BOHLINGER asked for additional information in reference to the testimony regarding the \$20,000 cost of grading with the \$2.3 million budget. Mr. Kennedy said there is an elected surveyor in Yellowstone County that gives the commissioners the opportunity to assign duties to a surveyor. He also gives the commissioners the opportunity to go ahead and vote to decide if the commission would like to hire a road superintendent to handle the road and bridge problems. Mr. Kennedy told about the study and some

history of various departments and how they have addressed some of the complaints and problems. He said one person running all of the various departments is not efficient and this bill would streamline and make it more efficient.

REP. MILLS asked **Mr. Kennedy** if he wanted a county superintendent and a county surveyor. **Mr. Kennedy** responded that currently in Yellowstone County, they already have an elected surveyor who is serving a four-year term so they could not take away the elected surveyor in Yellowstone County. He said if the commissioners decided to hire a road superintendent, yes, there would be both the surveyor and road superintendent with the ideal situation of going ahead and assigning the duties to the surveyor that would fit in the surveyors' duties and also to hire a road superintendent to go ahead with the roads and bridges.

REP. MILLS asked if he has any desire to eliminate the elected position of county surveyor and make it a hired position under the county commissioners. **Mr. Kennedy** said that cannot be done at the present time in Yellowstone County. The elected surveyor can only be eliminated through a constitutional amendment. In four years the elected surveyor in Yellowstone County could be a consolidated position.

Closing by Sponsor: The sponsor closed.

VICE CHAIRMAN HERRON announced that at the request of the sponsor, HB 249 has been moved from Local Government to the Highways and Transportation Committee.

EXECUTIVE ACTION ON HB 393

Motion: **REP. MATT BRAINARD** MOVED HB 393 DO PASS.

Discussion:

REP. BOHLINGER said he wanted to reinforce **REP. BRAINARD'S** comment, that from the testimony provided today, it's clear what is being offered in HB 393 is an opportunity to put all the concerns for roads and highways in the county commissioners office. This will streamline government and in time it could be contemplated that it could be a savings to local government and he fully supports this bill.

REP. MILL stated he is in support of what this bill is attempting to do and he looked forward to the day when the county surveyor becomes an appointed position in Yellowstone County instead of an elected position. The county commissioners that have the budget responsibilities should have management responsibilities also.

Vote: Motion carried 18-0.

ANNOUNCEMENTS:

Bart Campbell distributed copies of a letter to the committee from Jim Nugent, City Attorney, Missoula regarding the issue of non-freeholders that may serve on the City-County Planning Board. He said this issue may be determined at a future date.

REP. BILL BOHARSKI announced that SEN. WELDON has a bill that deals with boards and commissions in addition to the zoning bill and it will be put into another bill rather than a committee bill.

EXECUTIVE ACTION ON HB 101

Motion: REP. BOHARSKI MOVED HB 101 DO PASS.

Discussion: REP. BOHARSKI withdrew his motion so SB 99 may be heard at this time.

HEARING ON SB 99Opening Statement by Sponsor:

SEN TOM KEATING, Billings, said SB 99 is an act allowing the board of county commissioners to determine the site for the auction sale of real or personal property valued in excess of \$2,500. This bill is at the request of the Montana Association of Counties. This would allow the auction to be held where the equipment and foreclosed property has been impounded allowing the bidders to see the property that is up for sale.

Proponents' Testimony:

Gordon Morris, Director, Association of Counties, stated they support SB 99 and asked for favorable consideration.

Commissioner Bill Kennedy, Billings, said this is a housekeeping bill. They have road equipment, furniture, etc., that they auction off and it is inconvenient to hold this on the steps of the courthouse.

Blake Wordal, Lewis & Clark County Commissioner, stated their support for SB 99.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: The sponsor closed and said REP. ARNOTT will carry this bill.



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 393 (first reading copy -- white) do pass.

Signed: Wm E Boharski
Bill Boharski, Chair

Committee Vote:
Yes 17, No 1.

331416SC.Hbk

EXHIBIT 1DATE 2-7-95HB 393

LEWIS AND CLARK COUNTY

City County Building
P.O. Box 1724
316 North Park
Helena, Montana 59624
Telephone 406/447-8304

Board of County Commissioners

House Bill 393

For the record, I am Blake Wordal, a Lewis and Clark County Commissioner, and representing Lewis and Clark County here before you today.

This legislation was generated by a Resolution which was passed unanimously at the Montana Association of Counties annual meeting last September.

Sections 7-14-2101 through 7-14-2103, MCA set out the powers and duties of the Boards of County Commissioners. The powers and duties are broad, and include "lay out, maintain, control and manage county roads and bridges within the county". I have attached copies of those sections of the law for your review.

In addition, certain duties and responsibilities are granted to the county surveyor in Sections 7-4-4-2812, MCA. These duties and responsibilities sometimes conflict with one another where there are elected county surveyors. This legislation clarifies that the duties for maintaining, managing, laying out and controlling county roads can be assigned by the Board of County Commissioners to the county surveyor, where county surveyors exist, or to the county road superintendents.

This clarification helps to resolve three distinct problems:

First, most counties do not have elected county surveyors. Only ten counties have elected county surveyors, and of those ten, only five are surveyors which have not been combined with another county elected office. The five remaining counties which have elected county surveyors are: Cascade, Granite, Missoula, Richland and Yellowstone. This legislation will remove the conflicts between the powers and duties of the Board of County Commissioners cited earlier.

Second, five counties have combined the office of county surveyor with another office or the position is appointed. Those counties and positions are: Big Horn (Clerk & Recorder/Surveyor); Fallon (appointed); Gallatin (Clerk & Recorder/Surveyor); Ravalli (Assessor/Surveyor); and Lewis and Clark (Auditor/Surveyor). For these counties, this legislation allows the Board of County Commissioners to assign the duties where appropriate.

Third, most counties (46) do not have elected county surveyors. The requirements to be a county surveyor are more specific than most county offices. According to 7-4-2801, MCA, a county surveyor "shall be a registered professional engineer or registered professional land surveyor who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year." Salaries for county

electd officials are simply not competitive enough to find such professionals who are willing to run. This legislation will eliminate any questions or conflicts about how those 46 counties are currently assigning road duties and responsibilities.

The county surveyor is a county officer cited in the Montana Constitution, As I have mentioned, most counties do not have this officer, and even half of those that do have combined it with another elected position. We strongly urge you to pass this legislation to clarify the powers for managing and maintaining county roads.

SENATE LOCAL GOVERNMENT

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- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0220	ELLIOTT, JIM	2/20	3/09	3/23	ALLOWING EQUAL ASSESSMENTS AGAINST PROPERTY IN STREET LIGHTING DISTRICTS	TABLED ON 03/24	VOTE:		
HB0249	MARSHALL, ROD	2/21	3/09		GENERALLY REVISING LOCAL GOVERNMENT TRAFFIC REGULATION	CONCUR	3/16	VOTE:	3/18
HB0259	TUSS, CARLEY	2/21	3/14		RAISE PENALTY FOR MINORS VIOLATING A CURFEW ORDINANCE	CONCUR	3/14	VOTE:	3/16
HB0270	MCCULLOCH, LINDA	2/21	3/14		ALLOW REAL PROP OWNER TO PETITION FOR INCLUSION IN TRANSPORTATION DIST	CONCUR	3/14	VOTE:	3/16
HB0282	EWER, DAVID	2/01	3/02		CLARIFY DEPT OF COMMERCE DUTIES IN AUDITING & SUPERVISING LOCAL GOVERNMENTS	CONCUR	3/2	VOTE:	3/04
HB0289	SOFT, LOREN	2/21	3/14		ELIMINATE 12% UTILITY RATE INCREASE LIMIT ON MUNICIPAL UTILITIES	CONCUR	3/16	VOTE:	3/18
HB0308	EWER, DAVID	2/27	3/09		REVISE WATER\SEWER LAW RE: RATES, TERMINATION, COLLECTION, & ISSUING BONDS	CONCUR AS AMENDED	3/23	VOTE:	3/25
HB0358	TREXLER, CLIFF	2/27	3/21		ZONING PROTEST CRITERIA -- MODIFICATIONS	CONCUR	3/23	VOTE:	3/25
HB0393	GRADY, ED	2/20	3/16		REVISE LAWS RELATING TO SUPERVISION OF COUNTY ROADS	CONCUR AS AMENDED	3/16	VOTE:	3/20
HB0417	MILLS, NORM	2/21	3/16		ALLOW CITY'S GOVERNING BODY TO DECIDE NUMBER OF CITY JUDGES IN CITY COURT	CONCUR	3/16	VOTE:	3/18
HB0421	EWER, DAVID	3/09	3/21		REVISE COUNTY HOSPITAL LAWS	CONCUR	3/23	VOTE:	3/25
HB0425	KEENAN, BOB	2/21	3/16		REQUIRE PAYMENT OF PROPERTY TAXES BEFORE FINAL APPROVAL OF SUBDIVISION PLAT	CONCUR	3/16	VOTE:	3/18

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on March 16, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. Ethel M. Harding, Vice Chairman (R)
Sen. Sharon Estrada (R)
Sen. Delwyn Gage (R)
Sen. Don Hargrove (R)
Sen. Dorothy Eck (D)
Sen. John "J.D." Lynch (D)
Sen. Jeff Weldon (D)

Members Excused: none

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Elaine Johnston, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 393, HB 417, HB 425, HB 530
Executive Action: HB 393, HB 417, HB 425, HB 530, HB 249,
HB 289

{Tape: 1; Side: A; Approx. Counter: ; Comments: .}

HEARING ON HB 393

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, Canyon Creek, presented HB 393 which allowed county commissioners to assign supervision of county roads to either a county surveyor or a county road superintendent. HB 393 established duties and gave the county commissioners the assignment of responsibility of the surveyor or the road supervisor.

Proponents' Testimony:

Blake Wordal, Lewis and Clark County Commissioner, stated that HB 393 was generated by a resolution at the MACO convention. Section 7-14-2101 through 7-14-2103 set the powers and duties of the boards of county commissioners with regards to roads. Those powers and duties were broad and sometimes conflicted with duties given to the county surveyor in 7-4-2812. HB 393 would clarify the duties to layout, maintain, control, and manage county roads could be assigned by the county commissioners to the county road surveyor or the county road superintendents. This would resolve some distinct problems; first, many counties don't have elected surveyors, second, five counties had combined the office of surveyor with another office or the position was appointed. He continued that salaries for elected county officials were not competitive enough to draw professional surveyors to run for the position. HB 393 would eliminate any questions or conflict on how the counties assign road duties. He encouraged the committee's support of HB 393.

Lance Clark, Montana Association of Realtors, supported HB 393.

SEN. GARY FORRESTER, SD 8, Billings, supported HB 393 and stated that his district had been severely affected by the actions of a county surveyor. HB 393 would allow the county commissioners to assume some of the responsibilities for county roads which would allow for some flexibility.

Horace Brown, Missoula County Surveyor, said he supported the bill but did have a few problems. He pointed out on page 1 subsection 2 (c), the word construct bridges would be one of the capabilities of a road superintendent and 2 (d), (e), and (f) required more expertise than a road supervisor. Road superintendents may decide to reconstruct roads in an area and may cause a liability problem because the road may be built by eye rather than through a design. The road would not meet the county standards and if an accident were to happen, the county would lose the case because the standards formally recognized were not met. The section of the law which applied to counties over 20,000 (7-4-2812) if changed to lower standards, you would be going backwards. A first class county should be able to afford the necessary personnel to provide the services required of a first class county.

Bill Kennedy, Yellowstone County Commissioner, supported HB 393. He responded to the comment that they may be going backwards with HB 393 by saying he did not think that was the case. He said that currently they did not have an engineer but they did have a surveyor and a lot of their work was contracted out. With the option of a surveyor or road superintendent, the engineering or surveying may be contracted out and work could be cost effective. In Yellowstone County, they had a budget of about 2.3 million dollars for roads, 1 million for bridges, and a surveying budget of 6 to 8 hundred thousand dollars. HB 393 would give them the

efficiency they need in a large department. He said they were working on road policies to classify the roads and a policy that was affordable and safe. He also pointed out that the bill gave the option of appointing a road superintendent. He continued that HB 393 would give counties local control and would help counties as they addressed road problems.

Gordon Morris, Montana Association of Counties, pointed out that they had a resolution, 94-16 which called for the HB 393 and he urged the committee's support. He also pointed out that 46 counties had a superintendent or all the road work was under the offices of the foreman and the bulk of the work was done by contracting with professional firms.

Vernon Zickefoose, Yellowstone County Road Action Group, said that his group consisted of about 800 people and he urged support of HB 393.

Opponents' Testimony:

Jim Logan, Yellowstone County Surveyor, said that he opposed the process of HB 393 but was in favor that some type of process take place. He presented his written testimony (EXHIBIT 1).

Questions From Committee Members and Responses:

SEN. DON HARGROVE asked **Mr. Morris** to respond to the comments made about the duties to maintain and repair bridges along with other things were semantics and are the oversight responsibility would not be a problem with the bill. **Mr. Morris** said all they were doing was cleaning up the language.

SEN. JEFF WELDON asked **Mr. Brown** to answer the same question **SEN. HARGROVE** asked as he argued they were making a substitute change in the construct and adding of (d), (e), and (f) one page one which were present law. **SEN. WELDON** asked if they had misunderstood his argument? **Mr. Brown** said that he did not agree that it was the same thing. He did not think a road superintendent would have the expertise and there would have to be an understanding that the commissioners would contract to an engineering firm to take care of the problems to avoid a law suit.

SEN. J.D. LYNCH asked what the qualifications to run for county surveyor? **Mr. Brown** said that a person must be a registered land surveyor or a registered engineer and three years experience in the field.

SEN. LYNCH asked in regards to page two lines seven and eight, if duties are not assigned to the county surveyor, does he not get paid? **Susan Fox, Legislative Council**, said that it was an ambiguous statement and could be interpreted that way.

Closing by Sponsor:

REP. GRADY said the counties needed some flexibility and his county had run well without a county surveyor for some time. He said HB 393 was a good bill and he asked the committee to leave it the way it was and move it on through the system.

HEARING ON HB 417

Opening Statement by Sponsor:

REP. NORMAN MILLS, HD 19, Billings, presented HB 417 which allowed a city to have more than one city court judge and takes away the designation of police court instead of city court as they did more than police court work. He then referred to his written testimony (EXHIBIT 2).

Proponents' Testimony:

Dick Larsen, Mayor of Billings, said that HB 417 was initiated by the City of Billings and was needed by many other cities. He referred to page two paragraph three of the letter from Gayle Stewart, Billings City Judge, which was included in EXHIBIT 2. He said that felony and misdemeanor amounts were also added in HB 417. He continued that there were no state funds involved and that HB 417 was enabling a city at their option to make a selection of adding an additional judge as needed. He asked for the unanimous support of the committee for HB 417.

Alec Hanson, League of Cities and Towns, said that the City of Billings discussed this legislation at their annual conference and the organization agreed that cities should have the flexibility to add an additional judge. He said this was a perfect example of how state law restricts the ability of a city to provide adequate, fast, and efficient services to its citizens. He urged the support of the committee.

Bill Kennedy, Yellowstone County Commissioner, stated that Billings had been growing significantly and their court in the past two years added two court rooms to handle the justice court in the county. He stated that their court room books people up to five months time and HB 417 would enable them to have another judge to work possibly a night court or out of the jail court house to speed the process up and take the demand off of one judge.

Opponents' Testimony: none

Questions From Committee Members and Responses:

SEN. WELDON asked if the October effective date was soon enough? Mayor Larsen said that they did not need it any sooner.

SEN. SHARON ESTRADA asked what the cost of HB 417 would be to the City of Billings? Mayor Larsen said they had done some

methods and the bar system was on the trailing edge as it was not as broad or detailing. He suggested that depending on the capacity of the local entity they chose the method that would best fit them.

CHAIRMAN BECK asked if **Mr. Nowell's** department would be willing to take the lead to help a county set up on the GAAP system. **Mr. Nowell** said that they would be very helpful.

SEN. HARDING asked if there were any counties on the GAAP method? **Mr. Nowell** said that he was reluctant to suggest that there were people out of compliance with GAAP because they would not be able to receive an unqualified audit. He said that the bars system fell within GAAP and suggested that very few entities were out of compliance.

SEN. HARDING asked who from the counties were represented on the Governor's Task Force? **Mr. Ashley** said Stan Hughes from Gallatin County, Gloria Polatachuck, and Andy Dwightman of Yellowstone County but he could not remember all of the members.

SEN. HARDING said that if there were finance people on the Task Force then there would be different levels represented. **Mr. Ashley** said that he felt there was a good representation of small and large counties.

SEN. ECK asked if there would be significant changes in the budget due to a change in the accounting method? **Mr. Magee** said that would not happen because she was talking about the annual report rather than the budget and under GAAP you must also restate if methods would be changed.

Closing by Sponsor:

REP. WISEMAN said this was not a loop hole or a procedure for any city or county that could be in bad financial shape. HB 530 would make the budget easier to fit in the fiscal year. He suggested that more cities and counties will go to the GAAP method and he urged the committee to concur HB 530.

EXECUTIVE ACTION ON HB 393

Motion: **SEN. LYNCH** MOVED TO STRIKE ON PAGE 2 LINE 7 AND 8 "IF THE DUTIES ARE ASSIGNED TO THE COUNTY SURVEYOR".

Discussion:

SEN. LYNCH said his amendment would remove the possibility of any mischief.

SEN. HARGROVE asked if the same result would come from striking the whole sentence? SEN. LYNCH said they were going into present law and the old law probably said "he shall" in regards to receiving a salary.

SEN. HARDING said they had changed to a surveyor or road superintendent. SEN. LYNCH said that in that section it only referred to the surveyor. He said that in the rewording they were ambiguous.

SEN. HARDING said that in the beginning they would allow the delegation to either a county surveyor or county road superintendent they were saying if the duties were assigned to the surveyor he or she should receive an annual salary. SEN. LYNCH said that a county surveyor must receive an annual salary whether the duties are assigned or not under state law.

SEN. ECK said that if you decide to eliminate the surveyor office, it could be done by resolution and the amendment was correct.

CHAIRMAN BECK said that the title allows for a county surveyor or road superintendent then in section 3, the surveyor must receive the annual salary provided.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. LYNCH MOVED HB 393 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HARDING pointed out there was a question regarding section 2 (c) and if they needed to do anything with that. CHAIRMAN BECK said his interpretation of the duties gave the highway supervisor the authority to make sure everything was running. There would be no boss who knows everything there was to do but would have the qualified people do the work. The purpose was not that the road superintendent would actually construct the bridge or road, they will oversee the qualified people.

SEN. ECK pointed out where it said the board may allocate the duties between the surveyor and the superintendent and listed the duties.

SEN. WELDON said that part only dealt with county surveyors and the duties associated with them. What was new was the local board of commissioners could give the superintendent those duties. He said he would have to trust the local commissioners that they would assign competent people the duties.

Vote: THE MOTION CARRIED UNANIMOUSLY.

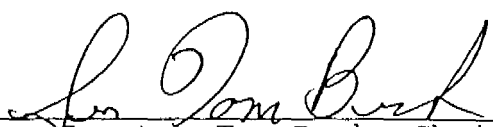
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1995

MR. PRESIDENT:

We, your committee on Local Government having had under consideration HB 393 (third reading copy -- blue), respectfully report that HB 393 be amended as follows and as so amended be concurred in.

Signed: _____


Senator Tom Beck, Chair

That such amendments read:

1. Page 2, lines 7 and 8.

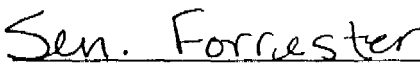
Following: "~~shall~~" on line 7

Strike: the remainder of line 7 through "the" on line 8

Insert: "The"

-END-


Amd. Coord.
Sec. of Senate


Sen. Forrester
Senator Carrying Bill

641014SC.SPV



YELLOWSTONE COUNTY
OFFICE OF THE SURVEYOR
P.O. BOX 36023
BILLINGS, MONTANA 59107-5023
(406) 256-2727
FAX (406) 256-2736

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 1
DATE 3-16-95
BILL NO. HB 393

March 16, 1995

Senator Tom Beck, Chairman
Committee Members
Senate Local Government Committee
Room 405

Re: HB 393

Reviewing the above captioned bill brings several concerns to mind.

Overall, if the bill is in conformity with the Montana Constitution (Article 11, Section 3) it certainly violates the spirit. This is evident throughout the document on Page 1, line 15 and 17, Page 2, lines 1,2,3,11,18,19, and 20. It is the removal of authority and management capability from an elected office, with out cause, by any two commissioners, creating a pseudo elected office. The authority created by HB 393 with the Commissioners gives such leverage over the elected official that it effectively changes the form of government, without having to stand the test of Government review, and the electorate. Excessive leverage is displayed on Page 2, line 11, 12 and 13 - If the duties are assigned to the county surveyor, the surveyor must receive the annual salary provided by law for salaried county surveyors and other county officials. This allows the commission to effectively do away with an elected office by simply not assigning duties.

HOUSE BILL NO. 393

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSIGN THE SUPERVISION OF COUNTY ROADS TO EITHER A COUNTY SURVEYOR OR A COUNTY ROAD SUPERINTENDENT; AND AMENDING SECTIONS 7-4-2812, 7-14-2102, AND 7-14-2301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1. Section 7-4-2812, MCA, is amended to read:

~~"7-4-2812. Duties of county surveyor related to roads and bridges in certain counties. (1) The county surveyor of all counties having a total registered vote of 20,000 or over at the last general election shall be responsible~~ The board of county commissioners may assign responsibility for the supervision and direction of all highways, bridges, and causeways within his the county to a county surveyor or to a county road superintendent. The board may allocate the duties between the surveyor and the superintendent.

~~(2) In the exercise of such control, supervision, and direction, he shall~~ The duties are to:

(a) keep all highways and bridges free and clear of all obstructions;

~~(b) cause highways to be graded, when needed, and~~ grade, maintain, and repair the same all highways;

~~(c) cause~~ construct, maintain, and repair all bridges and causeways ~~to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed;~~

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

1 (i) employ ~~and assign~~ deputies, men, and teams and discharge at his pleasure such deputies,
2 men, and teams and determine how, when, and where such deputies, men, and teams shall work and
3 staff;

4 (j) purchase and secure all highway and bridge machinery and machinery equipment and tools to
5 be used upon highways and bridges, with the approval of the board;

6 (k) purchase and secure all highway, bridge, and causeway supplies and materials, with the
7 approval of the board;

8 (l) from time to time, make reports and estimates of all matters relating to highways and bridges
9 when required by the board; and

10 (m) perform such other duties ~~as are now or which may be hereafter~~ required by law.

11 (3) ~~In the exercise of such control, supervision, and direction, he shall~~ If the duties are assigned
12 to the county surveyor, the surveyor must receive the annual salary provided by law for salaried county
13 surveyors and other county officials."
14

15 2. Section 7-14-2102, MCA, is amended to read:

16 "7-14-2102. General powers relating to county roads ~~-- assignment of responsibility~~. Each board
17 of county commissioners may in its discretion do whatever may be necessary for the best interest of the
18 county roads and the road districts. The board may assign responsibility for the supervision of county
19 roads to a county surveyor or to a county road superintendent or may allocate the duties between the
20 county surveyor and the county road superintendent."
21

22 3. Section 7-14-2301, MCA, is amended to read:

23 "7-14-2301. County road superintendent -- appointment and compensation. (1) ~~In counties~~
24 ~~without a county surveyor, each~~ A board of county commissioners may appoint a county road
25 superintendent. ~~He shall~~ The superintendent have such ~~has the~~ duties, powers, and responsibilities ~~as are~~
26 set forth in this part. After ~~his~~ the appointment, the county road superintendent shall serve at the pleasure
27 of and under the direction and control of the board. ~~He~~ The superintendent shall file with the county clerk
28 the customary oath of office and a bond approved by the board for the faithful performance of ~~his~~ the
29 superintendent's duties.

1 (2) ~~He shall~~ The superintendent must receive such compensation as is determined by the board."

2 -END-